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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Case No. 3:16-CV-03650-EMC

Plaintiff,

v.

**FINAL JUDGMENT AS TO DEFENDANT
ANDREW F. KERR**

ANDREW F. KERR,

Defendant.

The Securities and Exchange Commission having filed a Complaint, and Defendant Andrew F. Kerr having: entered a general appearance, consented to the Court's jurisdiction over him and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to personal and subject matter jurisdiction and except as otherwise provided in Section IV); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

SECTION 10(b) OF THE SECURITIES EXCHANGE ACT OF 1934

IT IS ORDERED AND ADJUDGED that Kerr is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5, by

1 using any means or instrumentality of interstate commerce, or of the mails, or of any facility of
 2 any national securities exchange, in connection with the purchase or sale of any security:

- 3 (a) to employ any device, scheme, or artifice to defraud;
- 4 (b) to make any untrue statement of a material fact, or to omit to state a material fact
 5 necessary in order to make the statements made, in the light of the circumstances
 6 under which they were made, not misleading, or
 7 (c) to engage in any act, practice, or course of business which operates or would
 8 operate as a fraud or deceit upon any person.
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10 **IT IS FURTHER ORDERED AND ADJUDGED** that, as provided in Federal Rule of
 11 Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice
 12 of this Final Judgment by personal service or otherwise: (a) Kerr's officers, agents, servants,
 13 employees, and attorneys; and (b) other persons in active concert or participation with Kerr or
 14 with anyone described in section (a) of this paragraph.
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16 **II.**

17 **DISGORGEMENT, PREJUDGMENT INTEREST, AND A CIVIL PENALTY**

18 **IT IS FURTHER ORDERED AND ADJUDGED** that Kerr is liable for disgorgement
 19 of \$62,088.63, representing profits gained as a result of the conduct alleged in the Complaint,
 20 together with prejudgment interest on disgorgement of \$8,522.18, for a total of \$70,610.81.
 21 Based on Kerr's sworn representations in his Statement of Financial Condition dated January 30,
 22 2017 and other documents and information submitted to the Commission, the Court is not
 23 ordering Kerr to pay a civil money penalty and payment of all but \$52,461.65 of the
 24 disgorgement and pre-judgment interest is waived. The determination not to impose a civil
 25 penalty and to waive payment of all but \$52,461.65 of the disgorgement and prejudgment
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1 interest is contingent upon the accuracy and completeness of Kerr's Statement of Financial
2 Condition. If at any time following the entry of this Final Judgment the Commission obtains
3 information indicating that Kerr's representations to the Commission concerning his assets,
4 income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any
5 material respect as of the time he made such representations, the Commission may, at its sole
6 discretion and without prior notice to Kerr, petition the Court for an order requiring Kerr to pay
7 the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and
8 the maximum civil penalty allowable under the law. In connection with any such petition, the
9 only issue shall be whether the financial information provided by Kerr was fraudulent,
10 misleading, inaccurate, or incomplete in any material respect as of the time such
11 misrepresentations were made. In any such petition, the Commission may move the Court to
12 consider all available remedies, including but not limited to order Kerr to pay funds or assets,
13 directing the forfeiture of any assets, or sanctions for contempt of the Court's Final Judgment.
14 The Commission may also request additional discovery. Kerr may not, by way of defense to
15 such petition: (1) challenge the validity of this Consent or the Final Judgment; (2) contest the
16 allegations in the complaint; (3) assert that payment of disgorgement, pre-judgment or post-
17 judgment interest, or a civil penalty, should not be ordered; (4) contest the amount of
18 disgorgement or pre-judgment or post-judgment interest; (5) contest the imposition of the
19 maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy,
20 including but not limited to any statute of limitations defense.
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24 Kerr shall pay the \$52,461.65 to the Securities and Exchange Commission within 14 days
25 after entry of this Final Judgment. Kerr may transmit payment electronically to the Commission,
26 which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also
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1 be made directly from a bank account via Pay.gov through the Commission website at
 2 <http://www.sec.gov/about/offices/ofm.htm>. Kerr may also pay by certified check, bank cashier's
 3 check, or United States postal money order payable to the Securities and Exchange Commission,
 4 which shall be delivered or mailed to:

5 Enterprise Services Center
 6 Accounts Receivable Branch
 7 6500 South MacArthur Boulevard
 8 Oklahoma City, OK 73169

9 and shall be accompanied by a letter identifying the case title, civil action number, name of this
 10 Court, and Kerr's name as a defendant in this action, and specifying that payment is made
 11 pursuant to this Final Judgment.

12 Kerr shall simultaneously transmit photocopies of evidence of payment and case
 13 identifying information to the Commission's counsel in this action, Robert K. Levenson,
 14 Securities and Exchange Commission, 801 Brickell Ave., Suite 1800, Miami, FL, 33131. By
 15 making this payment, Kerr relinquishes all legal and equitable rights, title, and interest in such
 16 funds and no part of the funds shall be returned to Kerr. The Commission shall send the funds
 17 paid pursuant to this Final Judgment to the United States Treasury.

18 The Commission may enforce the Court's judgment for disgorgement and prejudgment
 19 interest by moving for civil contempt (and/or through other collection procedures authorized by
 20 law) at any time after 14 days following entry of this Final Judgment. Kerr shall pay post
 21 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

22 **III.**

23 **INCORPORATION OF CONSENT**

24 **IT IS FURTHER ORDERED AND ADJUDGED** that Kerr's Consent is incorporated
 25 herein with the same force and effect as if fully set forth herein, and that Kerr shall comply with
 26 all of the undertakings and agreements set forth therein.
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IV.

EXCEPTION TO BANKRUPTCY DISCHARGE

IT IS FURTHER ORDERED AND ADJUDGED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are deemed true and admitted by Kerr, and, further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Kerr under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Kerr of the federal securities laws or any regulation or order under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

V.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Done and Ordered in Chambers in San Francisco, California, this 4th day of April, 2017.

Copies: Counsel and Parties of Record

